

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the Invasive
Species Citation Issued to Philip Joseph Kerber

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came before Administrative Law Judge Eric L. Lipman for a telephone Pre-Hearing Conference and evidentiary hearing. The hearing record closed at the end of the evidentiary hearing on March 15, 2012.

Jason Jensen, Conservation Officer, appeared on behalf of the Minnesota Department of Natural Resources. Philip Joseph Kerber, the licensee and motorist, appeared on his own behalf and without counsel.

STATEMENT OF THE ISSUE

1. Whether Mr. Kerber transported Eurasian milfoil, an aquatic macrophyte, after leaving a water access site in violation of Minn. Stat. § 84D.09?

The Administrative Law Judge concludes that Mr. Kerber did transport Eurasian milfoil, an aquatic macrophyte, in violation of Minn. Stat. § 84D.09. Accordingly, he recommends that the Commissioner AFFIRM the citation.

FINDINGS OF FACT

1. On July 24, 2011, after a day of boating on Lake Minnetonka, Mr. Kerber removed his boat from the lake at the public boat access site on Maxwell's Bay.¹

2. While cleaning his boat at the site, Mr. Kerber ignored a clump of vegetation at the tail end of his boat – believing the items to be *phleum pratense*, known as “Timothy grass.” In fact, the strands at the ends of his boat were Eurasian milfoil, an aquatic macrophyte.²

3. Shortly after leaving the public boat access site, and turning on to County Road 51, Mr. Kerber was stopped by Conservation Officer John Jensen. During the traffic stop, Officer Jensen pointed out the milfoil at the back of Mr. Kerber's boat.³

¹ Exhibits B, H and I; Testimony of Jason Jensen; Testimony of Philip Kerber.

² Test. of P. Kerber.

³ Exhibits B, H and I; Test. of J. Jensen; Test. of P. Kerber.

4. Mr. Kerber acknowledges that he did transport Eurasian milfoil – an invasive species – and that Officer Jensen noted these items during the traffic stop.⁴

5. Officer Jensen issued Mr. Kerber Citation Number 124999, for illegally transporting an invasive species on to a public roadway.⁵

6. Mr. Kerber timely appealed the citation.⁶

Based upon these Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 84D.13, subd. 8 and 116.072, subd. 6.

2. On July 24, 2011, Mr. Kerber unlawfully transported aquatic macrophytes in violation of Minn. Stat. § 84D.09.

3. Mistake is not a defense to a citation for transporting an invasive species.⁷

Based upon the Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner of Natural Resources AFFIRM the citation.

Dated: May 2, 2012

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded.

⁴ Ex. I; Test. of P. Kerber; see *also*, Minn. R. 6216.0250, subp. 1 (F) (Prohibited Invasive Species).

⁵ Ex. B.

⁶ Exs. C, D, E, F and G.

⁷ Minn. Stat. § 84D.13, subd. 5 (1).

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69.